

**COURT OF APPEALS
DECISION
DATED AND FILED**

August 2, 2016

Diane M. Fremgen
Clerk of Court of Appeals

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See WIS. STAT. § 808.10 and RULE 809.62.

Appeal No. 2015AP2336-CR

Cir. Ct. No. 2012CT2599

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT I**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

DANNY F. ANTON,

DEFENDANT-APPELLANT.

APPEAL from a judgment and an order of the circuit court for Milwaukee County: JOHN SIEFERT, Judge. *Affirmed.*

¶1 KESSLER, J.¹ On January 1, 2007, Danny F. Anton was stopped by a Milwaukee County Deputy for an unsafe lane deviation and speeding. Upon

¹ This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2) (2013-14). All references to the Wisconsin Statutes are to the 2013-14 version unless otherwise noted.

making contact with Anton, the deputy detected the smell of alcohol. Anton admitted to drinking that evening and was eventually arrested for operating while under the influence.

¶2 Anton was initially charged with operating while under the influence as a first offense; however, the State eventually discovered that Anton had two prior operating while intoxicated convictions that were fraudulently vacated. The State determined that Anton filed false conviction status reports, removing the prior convictions from his record. The State then charged Anton with operating while under the influence as a third offense.

¶3 Following a court trial, the circuit court found Anton guilty. Anton successfully appealed the conviction and the case was remanded back to the Milwaukee County Circuit Court. Following a successful postconviction motion, Anton's conviction was vacated and dismissed without prejudice. Anton was subsequently recharged on December 7, 2012. Anton was convicted by a jury of operating while intoxicated as a third offense.

¶4 At sentencing, the State discussed Anton's numerous prior convictions, including first and second-degree sexual assault, identity theft, and forgery, and requested that the court sentence Anton to five months in jail consecutive to his other sentences. The sentencing court declined the State's request, stating that the request for a consecutive sentence was "piling on" to Anton's other sentences and instead sentenced Anton to one year of incarceration concurrent to his other sentences. The court stated that it was "appalled" by Anton's forgery conviction and that Anton possessed "bad character." The court explained that Anton's use of forged conviction status reports "goes to the very heart of the justice system." The court imposed a \$600 fine, to come out of

Anton's prison wages, and ordered the maximum driver's license revocation. The court also addressed Anton's potential immigration consequences, telling Anton that he has not "shown the character that deserves a green card."

¶5 Anton filed a postconviction motion requesting resentencing on the basis that the sentencing court did not adequately explain its reasons for the sentence it imposed in accordance with *McCleary v. State*, 49 Wis. 2d 263, 182 N.W.2d 512 (1971), and *State v. Gallion*, 2004 WI 42, 270 Wis. 2d 535, 678 N.W.2d 197. The postconviction court denied the motion, stating:

The facts of this case were not complicated and were well-known to the parties and court, which presided over the defendant's jury trial. The court did not need to reiterate the facts at sentencing or explicitly include them as part of its sentencing analysis when the court's decision was not significantly guided by the facts of this case but by other factors, most particularly the defendant's extremely poor character as revealed by his prior record and the extensive amount of confinement time he was already serving for unrelated convictions.

....

While the defendant argues that the court did not mention the aggravating or mitigating factors other than his prior felony conviction, he does identify the particular factors he believes the court should have mentioned. In any case, the court was not required to comment on those factors or to assign any particular weight to them in making its sentencing decision. Furthermore, the court rejects the defendant's claim that the court did not identify what factors were considered in arriving at his sentence or how those factors fit the court's sentencing objectives. While the court did not parrot some of the typical buzz words commonly seen in some sentencing transcripts, the court identified the factors that weighed most heavily upon its sentencing decision, to wit, the defendant's character for fraud, his disturbing prior record and rehabilitative needs, the extensive amount of confinement time he was already serving in the state prison system and the interest in punishment.

¶6 This appeal follows.

DISCUSSION

¶7 On appeal, Anton contends that he is entitled to resentencing because the sentencing court failed to adequately state its reasons for the sentence it imposed. We disagree.

¶8 Sentencing is vested in the circuit court's discretion. *See State v. Steele*, 2001 WI App 160, ¶10, 246 Wis. 2d 744, 632 N.W.2d 112. The circuit court must consider three primary factors: (1) the seriousness of the crime; (2) the defendant's character; and (3) the need to protect the public. *See McCleary*, 49 Wis. 2d at 271. Courts may also consider secondary factors:

(1) [p]ast record of criminal offenses; (2) history of undesirable behavior pattern; (3) the defendant's personality, character and social traits; (4) result of presentence investigation; (5) vicious or aggravated nature of the crime; (6) degree of the defendant's culpability; (7) defendant's demeanor at trial; (8) defendant's age, educational background and employment record; (9) defendant's remorse, repentance and cooperativeness; (10) defendant's need for close rehabilitative control; (11) the rights of the public; and (12) the length of pretrial detention.

Gallion, 270 Wis. 2d 535, ¶43 n.11 (citation and quotation marks omitted). Courts must give reasons for the sentence imposed; however, how much explanation is required varies from case to case. *Id.*, ¶39. There is a strong public policy against interfering with the sentencing discretion of the circuit court. *State v. Harris*, 119 Wis. 2d 612, 622, 350 N.W.2d 633 (1984).

¶9 Even when a sentencing court “fails to specifically set forth the reasons for the sentence imposed, ‘we are obliged to search the record to determine whether in the exercise of proper discretion the sentence imposed can

be sustained.” See *State v. Hall*, 2002 WI App 108, ¶6, 255 Wis. 2d 662, 648 N.W.2d 41 (quoting *McCleary*, 49 Wis. 2d at 282). If this independent search shows facts upon which the sentence is based, or facts fairly inferable from the record, reasons based on legally relevant factors, and evidence that “the sentence imposed was the product of that discretion,” then “the sentence should ordinarily be affirmed.” *Hall*, 255 Wis. 2d 662, ¶19 (quoting *McCleary*, 49 Wis. 2d at 281).

¶10 While this court would have preferred that the sentencing court address each primary sentencing factor more completely and more explicitly state the objectives for the sentence imposed, the court did meet the minimum requirements in this particular case. The court focused most extensively on Anton’s character, noting plainly that it was “appall[ing]” and simply “bad” to the extent that the court found Anton undeserving of a green card. The court discussed the importance of punishing Anton for his crime and noted that Anton’s forgeries went “to the very heart of the justice system.” The court implicitly addressed the need to protect the public by revoking Anton’s driver’s license.

¶11 The record also shows that the postconviction court provided an explanation of the sentencing court’s decision in its postconviction order, which this court may consider in our search of the record. See *State v. Santana*, 220 Wis. 2d 674, 683, 584 N.W.2d 151 (Ct. App. 1998). The postconviction court reiterated its concern about Anton’s character, as evidenced by his prior conduct, the need for punishment and rehabilitation, and the gravity of his offense. Accordingly, we affirm the postconviction court.

By the Court.—Judgment and order affirmed.

This opinion will not be published. See WIS. STAT. RULE
809.23(1)(b)4.

